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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 547

ERNEST TRIPLETT,

Petitioner,

vs.

STATE OF IOWA,

Respondent.

BRIEF OF PETITIONER ON THE MERITS

ERNEST TRIPLETT, *Petitioner*

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VIRGIL TACY
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Counsel for Petitioner

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BRIEF OF PETITIONER ON THE MERITS

Opinion of the Court Below

The opinion of the Supreme Court of Iowa appears in 79 NW (2d) 391.

Jurisdiction

The jurisdiction of the Supreme Court of the United States is invoked under 28 U.S.C., Section 1257 (3) which provides in part:

> "(3) By Writ of Certiorari . . . where any title, right, privilege or immunity is specifically set up or claimed under the constitution . . ."

Constitutional Provisions

Article XIV, Section 1, of the Constitution provides:

> ". . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law."

Petitioner claims that his right to due process of law was denied him by 20 days illegal detention by police after arrest on suspicion, without a warrant, for the purpose of securing a confession before taking him before a magistrate and the admission in evidence on his trial of confessions and admissions made in an insane hospital after such 20 days detention.

Article VI of the Constitution provides:

> "In all criminal prosecutions, the accused shall have the right . . . to have assistance of counsel for his defense."

Petitioner claims that the right to assistance of counsel for his defense was denied him in the pre-trial stages of his prosecution, during which time false admissions and confessions were made by him and used against him on his trial.

Statement of the Case

The Indictment

On the 12th day of April, 1955, the Grand Jury of Plymouth County, Iowa, returned into court an indictment, accusing Ernest Triplett of the crime of murder and alleg-

ing that the said Ernest Triplett did, on or about the 31st day of August, 1954, in Plymouth County, Iowa, murder Jimmy Bremmers.

The Plea and Trial

To this indictment and the charge contained therein, the said defendant-petitioner, Ernest Triplett, entered his plea of Not Guilty, and on the 6th day of June, 1955, a trial was had to a jury on the issues raised by said Indictment and Plea. Petitioner was convicted of Murder in the Second Degree.

The Sentence

The Court pronounced judgment upon the verdict of the jury and on the 7th day of July, 1955, sentenced the defendant to life imprisonment in the State Penitentiary at Fort Madison, Iowa.

The Appeal

On the 7th day of July, 1955, the defendant perfected his appeal to the Supreme Court of the State of Iowa, judgment affirming the decision of the lower court was entered on date of November 13, 1956.

Rehearing

On date of January 18, 1957, a petition for rehearing in the Supreme Court of the State of Iowa was denied.

Petition for Writ of Certiorari

On a date within the 90 days prescribed for filing said Writ, a Petition for a Writ of Certiorari was filed in the Supreme Court of the United States. On the 14th day of October, 1957, the Supreme Court of the United States entered the following Order:

"The motion for leave to proceed in forma pauperis and the petition for the Writ of Certiorari are granted. The case is transferred to the appellate docket and place on the summary calendar."

Statement of Facts

Prior to Arrest

Jimmy Bremmers, an 8 year old boy, disappeared from his home in Sioux City, Iowa, at about 8:00 P.M. on August 31, 1954.

The petitioner had been in Sioux City about 2 weeks prior to the boy's disappearance. He was a salesman for the Flood Music Studio, Sioux City, Iowa, and drove a car furnished by the studio for solicitation of business. A resident of the neighborhood of the Bremmers home reported to police that petitioner had been soliciting business in that vicinity the evening that the boy disappeared. This report was made to the police on September 2, 1954. On this information alone, Assistant Chief of Police, White, telephoned Mr. Flood of the Flood Music Studio and asked him to have petitioner wait at the studio that morning until the police could question him about the disappearance of the Bremmers boy. Mr. Flood told petitioner of this request of the police and petitioner waited at the studio from 9:00 A.M. until about 1:30 P.M., at which time the officers arrived, questioned petitioner and took him into custody without a warrant. He did not seem excited or nervous while waiting for the officers (R. 57).

The corpus delicti was not established until September 29, 1954, at which time the Bremmers boy's decomposed body was found in a pasture over the line in Plymouth County, Iowa.

During Period of Arrest Prior to Arraignment

After his arrest the petitioner was held in custody and questioned daily by the police for one period of 14 days and another period of 6 days. During the interim between these periods of questioning by the police, petitioner was in the Mental Health Institute at Cherokee, Iowa (R. 24, 25). This questioning was on the assumption that the boy was dead and that petitioner was guilty of his murder (R. 11).

After petitioner had been in police custody under questioning for a few days, Officer Warnstadt, who then had charge of the petitioner in the police station authorized a private detective, Joe Matousec, to attempt to secure a confession from petitioner. Officer Warnstadt was in and out during the questioning. Mr. Matousec offered to secure counsel for the petitioner if he would confess to the crime and assured him that the only penalty would probably be a few years in the Mental Health Institute, after which he would be released. He found petitioner "co-operative to the point of exasperation." Petitioner offered to confess to the police if Mr. Matousec would tell him how the boy was killed. Mr. Matousec said investigators presumed the boy had been murdered (R. 10-11).

Offer of Counsel

On October 1, 1954, Mr. Stanley Corbett, then president of the Woodbury County Bar Association, Sioux City, Iowa, asked petitioner whether he wished to seek his release by petition for Habeas Corpus. Petitioner had previously been warned by Detective Harry Gibbons of mob violence if he secured his release and was out on the street (R. 74).

Immediately after this interview concerning a possible habeas corpus proceeding, petitioner was taken before the

Insanity Commission of Woodbury County, Iowa and committed on October 5, 1954 to the screening center of the Mental Health Institute at Cherokee, Iowa to be examined as to his sanity. The next day October 6, 1954, petitioner's confession was secured on a tape-recording machine in said institution by an attendant, two staff doctors and two Sioux City detectives, without the knowledge or consent of Dr. Brinegar, the Superintendent (R. 52).

Preparing the Confession

Prior to making this confession, the petitioner was warned by Dr. Azordegan that he was in the hospital for being insane and would have to stay there for life unless he pleaded guilty. He assured petitioner that he could help him only if he admitted his guilt and promised petitioner that if he would confess, he would be given employment at the hospital, kept about 2 years and then released. He administered different drugs or medicine to the petitioner who had a feeling of unreality during the taking of the tape-recorded confession (R. 66, 67, 68).

Petitioner and Dr. Azordegan worked out the details of the proposed confession together. The doctor told him what to say and petitioner repeated it. The doctor did not tell him he was guilty, but stated he could help petitioner only if he confessed guilt.

Proceeding in Trial Court

The petitioner denied and repudiated on the witness stand the facts set forth in the tape-recorded confession and all oral admissions and statements detrimental to him made during this 20 day period of illegal detention by the police.

Over proper objection of defense counsel, the tape-recorded confession was played before the jury and the

play-back machine and tape were taken to the jury room and the recorded confession again played by a juror before the jury during its deliberation (R. 82, 83, 84).

The Verdict

The jury found the petitioner guilty of murder in the second degree and he was sentenced by the Court to life imprisonment (R. 84, 141).

Conclusion of Statement of Facts

There was no evidence, direct or circumstantial, tending to connect the petitioner with the commission of the crime charged, other than his admissions and confessions obtained by the means above described. Petitioner was never seen at the scene of the crime or in the company of the boy. No blood was found on his clothing or in his car and no murder weapon was found anywhere. He had no record of conviction of any other crime. Petitioner was 52 years old at the time of his conviction. Since his conviction and life sentence, petitioner has been confined in the State Penitentiary at Fort Madison, Iowa.

Constitutional Provisions and Statutes Relied Upon

Article XIV, Section 1, Constitution of the United States.

Article VI, Constitution of the United States.

Federal Statutes Involved

U.S.C., Title 18, Rule 5.

State Statutes Involved

Section 758.1, Code of Iowa, 1954.

FEDERAL CASES INVOLVED

McNabb v. *United States*, 318 U.S. 332, 343, 344;
Upshaw v. *United States*, 335 U.S. 410; 69 S.Ct. 170;
Watts v. *State of Indiana*, 338 U.S. 49; 69 S.Ct. 1347;
Leyra v. *Denno, Warden*, 347 U.S. 556, 560, 561;
Mallory v. *United States*, 77 S.Ct. 1356.

STATE CASES INVOLVED

State of Iowa v. *Storms*, 113 Iowa 385; 85 NW 610;
State of Iowa v. *Thomas*, 193 Iowa 1004; 188 NW 689;
State of Iowa v. *Archer*, 244 Iowa 1045; 58 NW 2d 44, 49.

Questions Presented for Review

I

Was petitioner denied due process of law by admission of confessions in evidence on his trial, over objection that same were involuntary, said confessions having been obtained by threats and promises after 20 days of questioning before arraigning petitioner before a magistrate? (See Page 1 of Petition for a Writ of Certiorari, Par. 1 under caption "Questions Presented")

II

Was petitioner denied due process of law by not having assistance of counsel in the pre-arraignment stages of his prosecution? (See Page 2 of Petition for Writ of Certiorari, Par. 2 under caption "Questions Presented")

ARGUMENT

I

Petitioner Was Denied Due Process of Law by Being Held Illegally by Police, Under Arrest Without a Warrant, for a Period of 20 Days for the Purpose of Securing His Confession Before Taking Him Before a Magistrate.

This petitioner was held by the police in the jail at Sioux City, Iowa, and subjected to questioning for twenty days in an effort to secure a confession before taking him before a magistrate, after his arrest on mere suspicion, without a warrant. This unlawful detention was a violation of the statutes of Iowa and of the United States and is denounced as a denial of due process of law by the decisions of both the Iowa and the United States Supreme Courts.

Section 758.1, Code of Iowa, 1954, provides:

> "When an arrest is made without a warrant, the person arrested shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the arrest is made, and the grounds on which the arrest was made shall be stated to the magistrate by affidavit, subscribed and sworn to by the person making the statement, in the same manner as upon a preliminary information, as nearly as may be."

U.S.C., Title 18, Rule 5 provides:

> "(a) APPEARANCE BEFORE THE COMMISSIONER: An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby office empowered to commit

persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith."

Referring to the unlawful detention of the petitioner in the case at bar, the Iowa Supreme Court strongly condemned this 20 day detention and said in its opinion:

"Of course, the length of time he was held was much too long. Such a practice cannot be approved. But we have held that this, in itself, does not render a confession involuntary . . . " (R. 144).

In the case of *State* v. *Archer*, 244 Iowa 1045; 58 NW (2d) 44, a case wherein the accused was questioned intensely for four days before he confessed, the court reversed the case and said in part:

"The defendant simply gave up what seemed to him an unequal struggle. He was being held illegally and there seemed every indication that it was the intention of the officers, sworn to uphold the law but who were actually and effectively flouting it, to hold him and continue their questioning until he told them what they wanted to hear."

In the case of *State* v. *Thomas*, 193 Iowa 1004; 188 NW 689, quoted with approval in the recent case of *State of Iowa* v. *Archer, supra*, the Iowa Supreme Court said:

"Held by these officers in a room to which no friend of the defendant was admitted, he was subjected to four hours of rigorous and determined interrogation. Over and over again he denied all complicity in the alleged crime, only to have his statements rejected as false and met with the insistent demand upon him to con-

fess. True, the officers said they did not in so many words demand a confession, but that they were simply demanding that he tell the truth. This, however, is only a play upon words, for his assertion of what he claimed to be the truth was met by a constant repetition of a demand which implied he was telling a falsehood, and that no answer would be satisfactory which did not admit his guilt."

The record in this case reveals a striking similarity to the *Thomas* and *Archer* cases, *supra*. Note the testimony of William Dennison, Chief of Detectives, Sioux City Police Department:

"He was held by us in custody another six days after he was brought back from Cherokee the first time, about 20 days altogether. We were putting him through many series of questioning during the 20 days he was in the police station. We questioned him many times. We questioned him possibly almost every day. He was not questioned after midnight to my knowledge. I possibly told him I thought he was responsible for the disappearance of the Bremmers boy.

Q. And you wouldn't take 'no' for an answer, would you? A. No, I wouldn't" (R. 24, 25).

Concerning the persistence of the questioning, petitioner testified:

"Q. Will you state whether or not, as a result of these questionings for some 20 days in the police station, you allowed, as you say, to just let them talk, and didn't deny anything? A. That's all you could do. There was no use denying nothing, you would tell them; they would turn right around and shove it back in your mouth. I am human and can stand only so

much and I imagine I needed a rest. I sure did about the time I went down to Cherokee" (R. 70, 71).

That the illegal detention was for the purpose of securing a confession from the accused is clearly expressed by Chief of Detectives, William Dennison, who testified:

(*Cross examination by Mr. Tacy*)

"Q. I am asking you now, if he reiterated over and over that he was innocent, why didn't you take him before a magistrate before you got this confession, instead of afterwards? A. Because I still thought he was guilty" (R. 28).

Previously said William Dennison testified:

"Q. And you were holding him all this time on suspicion and taking him around all over the country wherever you wanted to, without taking him before a magistrate, as the law requires you to do, is that right? A. That's right.

Q. Now, you expected other people to obey the law, don't you? A. Absolutely.

Q. Don't you think a peace officer should also obey the law? A. Surely" (R. 19, 20).

Detective Harry Gibbons also testified, on cross examination, along the same line:

"Q. Now, at the time you got in this car and took Ernest Triplett on this ride out in the country, he was in custody of the law, wasn't he? A. Yes sir.

Q. Did you think you had the right to put him in the car and drive him any place you wanted to, just because he was there in jail? A. Yes, I thought I had that right" (R. 21).

The trip just referred to was to take petitioner to view the body of the boy on September 29th, after petitioner had been in custody without a warrant, on mere suspicion, since September 2nd. The foregoing testimony reveals a situation which is inconsistent with and a denial of due process of law. The tape-recorded confession and any admissions made by the petitioner during this period of illegal restraint were inadmissible on his trial, as a matter of law.

The defendant, now petitioner, on his trial repudiated all confessions and admissions made during this period of illegal detention, claiming they were induced by threats, promises of leniency and exhaustion.

It stands uncontradicted in the record that Dr. Azordegan, then a staff doctor, in whose charge defendant was placed in the Mental Health Institute at Cherokee, Iowa, threatened to keep him in the said hospital for life unless he confessed the crime and promised that if he confessed, he would see that he was employed at the hospital and would see that he was released after about two years. The doctor helped petitioner frame his confession story, but neither knowing at the time how the boy was killed, petitioner said he hit the boy with his hand (R. 49).

Thomas L. Coriden, coroner, testified that the blows which caused the death of the boy could not have been made by a human hand:

> "These blows could have been caused by a hammer. The holes were round to rectangular and in each case there were no ragged edges and the piece of bone was driven into the interior of the skull.
>
> Q. And you say it couldn't have been done by a human hand? A. No" (R. 2, 3).

While making an honest attempt to frame a confession which would give him the benefit of promised leniency, is it not logical that the accused would have revealed the manner in which the boy was killed and with what instrument, if he had actually committed the crime?

When Officer Warnstadt, who had the defendant in charge at the police station, authorized Joseph Matousec, a private detective, to interview defendant and attempt to secure a confession, petitioner tried to get Mr. Matousec to tell him how the boy was killed so he could confess it to the police in a satisfactory manner.

Mr. Matousec testified:

> "I found him co-operative to the point of exasperation. He told me if I would tell him how he committed the crime, he would admit it. There was no doubt in my mind that I could have gotten him to admit it if I had wanted to accept it on that basis. . . . He said 'I have no idea how the crime was committed.'
>
> Q. You mean he told you if you would tell him how the boy was killed, he would admit it to the police? A. That's right.
>
> Q. Did you make any statement to him as to how long he might be held at Cherokee, if he made a statement to the police? A. Well, I don't just remember about that. I think I probably told him that a matter of three or four years, or two or three years treatment possibly, and he would be released again, as I recall it.
>
> Q. On condition that he confess to the crime to the police? A. That's right" (R. 10, 11).

This interview between Mr. Matousec, under authority of the officer having petitioner in charge, points up the same fact brought out in the interview with Dr. Azordegan, namely: that petitioner did not know how the boy was

killed. Although Mr. Matousec later, convinced that Triplett knew nothing about the crime, did some investigational work on behalf of the defense, he was acting against the interests of the accused and attempting to secure his confession at the time he interviewed him in the jail under authority of Officer Warnstadt. Surely, an accused, so eager to confess, would have given the details of the crime had he been the one who committed it. Mr. Matousec testified that he considered the disappearance of the boy as a murder when talking to Mr. Triplett (R. 11, 12).

II

Your Petitioner Was Denied Due Process of Law by Being Deprived of Assistance of Counsel From the Time of His Arrest on Suspicion, Without a Warrant and Without Arraignment From the Date of His Arrest, September 2, 1954 to the Date of His Confession, October 6, 1954.

When the petitioner was visited in jail by Stanley Corbett, then president of the Sioux City Bar Association, who offered, on behalf of the bar association to furnish him counsel, petitioner declined. He told Mr. Corbett, among other reasons, that he was not charged with any crime and did not see the need of counsel. On his trial, he gave his real reason for not wanting counsel at that time. He was afraid of mob violence. He testified as follows:

> "Right then and there I was trying to prove to the detective force that I wasn't guilty and I figured they would turn me loose; but they made a steady customer out of me. He said if I wanted an attorney, he would get me one, but Mr. Gibbons said it would not be nice for me to get out on the street and let the public get hold of me, because, he said 'What they won't do to you.' So, I didn't have no place to go, I might as well stay and fight it out with them" (R. 74).

It seems rather significant that as soon as the bar association showed this interest in the case, papers were prepared for the signature of petitioner alleging that he was afflicted with insanity and a hearing had before the Insane Commission of Woodbury County, Iowa. Mr. Corbett's offer of counsel was made on the 1st day of October and petitioner was in the Mental Health Institute October 5th and his confession secured by Dr. Azordegan and the Sioux City detectives on October 6th.

It should also be remembered that this offer of counsel was on the 1st day of October and petitioner had then been held illegally since September 2nd, a period of 29 days.

The threat of mob violence, as testified to by the petitioner, is without denial in the record. This answers the testimony of some of the state's witnesses that petitioner preferred not to be released or taken before a magistrate during this long period of illegal detention under arrest without a warrant.

Even if petitioner had preferred to stay in jail to being taken before a magistrate, his preference would have no effect on the duty imposed by law upon the arresting officers to take him before a magistrate without unnecessary delay. This long period of detention of the petitioner, without assistance of counsel, and for the purpose of securing a confession before arraignment constituted a flagrant violation of petitioner's rights under the constitution and laws of Iowa and the Constitution of the United States. To admit in evidence admissions and confessions thus secured constituted a denial of due process of law.

Some former decisions of this Court which are applicable to the case at bar, includes:

McNabb v. *United States*, 318 U.S. 332, 343, 344;
Upshaw v. *United States*, 335 U.S. 410; 69 S.Ct. 170;
Watts v. *State of Indiana*, 338 U.S. 49; 69 S.Ct. 1347;
Leyra v. *Denno, Warden*, 347 U.S. 556, 560, 561;
Mallory v. *United States*, 77 S.Ct. 1356.

These cases all condemn the holding of an accused person with the intent and for the purpose of securing a confession before taking him before a magistrate as violative of due process of law and that admissions and confessions obtained during such period of illegal detention are inadmissible in evidence on the trial of the accused.

In the most recent of these cases, *Mallory* v. *United States*, this Honorable Court said:

> "The duty enjoined upon arresting officers to arraign 'without unnecessary delay' indicates that the command does not call for mechanical or automatic obedience. Circumstances may justify a brief delay between arrest and arraignment, as for instance, where the story volunteered is susceptible of quick verification through third parties. But the delay between arrest and arraignment must not be of such a nature to give opportunity for the extraction of a confession."

In the same case, the Court further said:

> "Police detention of defendants beyond the time when a committing magistrate was readily accessible constituted 'wilful disobedience of law.' In order adequately to enforce the congressional requirement of prompt arraignment, it was deemed necessary to render inadmissible incriminating statements elicited from defendants during a period of unlawful detention."

Mallory v. *United States*, 77 S.Ct. 1356.

CONCLUSION

For all the reasons set forth in this Brief and Argument, your petitioner submits to this Honorable Court that he has been denied due process of law and that his conviction should be set aside.

Respectfully submitted,

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